

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARLOS GARCIA,

Petitioner,

-v-

18-CV-6836 MAT
ORDER

MATTHEW G. WHITAKER, Acting
Attorney General, et al.,

Respondents.

Pro se petitioner Carlos Garcia ("Petitioner"), who is subject to an order of removal issued by an Immigration Judge, has filed a Petition (Docket No. 1) for a writ of habeas corpus pursuant to 28 U.S.C. § 2241(c) challenging his detention in Respondents' custody at the Buffalo Federal Detention Facility. Petitioner claims that his detention violates due process because there is "no significant likelihood of [his] removal in the reasonably foreseeable future" *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001) (presumptive limit to reasonable duration of detention under § 1231(a)(6) is six months; after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing"); see *generally* 8 U.S.C. § 1231(a)(1) (stating that Attorney General must remove an alien within 90 days of final order of removal), 8 U.S.C. § 1231(a)(6) ("An alien ordered removed . . . may be detained beyond the [90-day] removal period . . .").

Petitioner has paid the \$5.00 filing fee and also has filed a Motion for Appointment of Counsel (Docket No. 2). Accordingly, Respondent shall be directed to

file an answer to the Petition. Because Respondents have not yet answered the Petition, Petitioner's Motion for Appointment of Counsel is denied without prejudice as premature. See 18 U.S.C. § 3006A(a)(2)(B)

ORDER

IT IS HEREBY ORDERED that Petitioner's Motion for Appointment of Counsel (Docket No. 2) is denied without prejudice; and it is further

ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve an **answer** responding to the allegations in the Petition (Docket No. 1); and it is further

ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve, in addition to their answer, a **memorandum of law** addressing each of the issues raised in the Petition and including citations to supporting authority and applicable sections of the Immigration and Nationality Act; and it is further

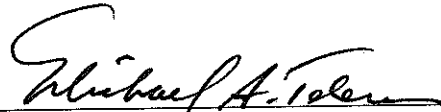
ORDERED that within **45 days of the date of this Order**, instead of their answer, Respondents may file a **motion to dismiss** the Petition, accompanied by appropriate exhibits demonstrating that an answer to the Petition is unnecessary; and it is further

ORDERED that Petitioner shall have **25 days after his receipt of the Respondents' answer or motion to dismiss** to file a written response; and it is further

ORDERED that the Clerk of Court shall serve a copy of the Petition, together with a copy of this Order, electronically via a Notice of Electronic Filing to the United States Attorney's Office, Western District of New York at USANYW-Immigration-Habeas@usdoj.gov.

PETITIONER IS ADVISED THAT HE MUST FORWARD A COPY OF ALL
FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING
FOR RESPONDENTS.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Michael A. Telesca", is written over a horizontal line.

Michael A. Telesca
United States District Judge

DATED: April 2, 2019
Rochester, NY